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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/776,364

02/02/2001

Mark J. Krafft

MICT-0134-US

8094

7590

11/17/2004

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EXAMINER.

ART UNIT

PAPER NUMBER

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/776,364

Applicant(s)

KRAFFT, MARK J.

Examiner

Jeffrey R. West

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☒ The appeal brief filed on 19 August 2004 is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

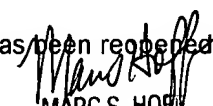
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
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1. The MPEP states that, "If an appealed ground of rejection applies to more than one claim and appellant considers the rejected claims to be separately patentable, 37 CFR 1.192(c)(7) requires appellant to state that the claims do not stand or fall together, and to present in the appropriate part or parts of the argument under 37 CFR 1.192(c)(8) the reasons why they are considered separately patentable. . . It should be noted that 37 CFR 1.192(c)(7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection are separately patentable. Where the appellant does neither, the claims will be treated as standing or falling together. Where, however, the appellant (A) omits the statement required by 37 CFR 1.192(c)(7) yet presents arguments in the argument section of the brief, or (B) includes the statement required by 37 CFR 1.192(c)(7) to the effect that one or more claims do not stand or fall together (i.e., that they are separately patentable) yet does not offer argument in support thereof in the "Argument" section of the brief, the appellant should be notified of the noncompliance as per 37 CFR 1.192(d). Ex parte Schier, 21 USPQ2d 1016 (Bd. Pat. App. & Int. 1991); Ex parte Ohsumi, 21 USPQ2d 1020 (Bd. Pat. App. & Int. 1991).

2. In the instant case, Appellant has included a statement indicating that one or more claims do not stand or fall together, yet does not offer argument in support thereof.

Applicant has presented the following groups:

Group 1: Claims 1, 2

Group 2: Claims 6-11

Group 3: Claims 14, 18, 19

Group 4: Claims 23, 24, 32

Group 5: Claims 3, 4, 17, 27, 29-31

Group 6: Claims 12, 13

Group 7: Claims 20, 21, 25, 26

With claims 5 and 28 not contained in any group.

3. Appellant does not provide any argument as to why the claims subject to the same rejection are separately patentable in the "Grouping of Claims".

4. Turning to the "Argument" section, Appellant also does not provide any argument as to why the claims subject to same rejection are separately patentable and instead argues the claims as they are grouped in the rejection.

5. Appellant has also indicated that claims 5 and 28 are not part of any group but argues claims 5 and 18 as grouped in the rejection.